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**MAY 24 2002**

**OFFICE OF PETITIONS**

In re Application of :  
Robert Sackstein :  
Application No. 09/619,290 : DECISION REFUSING STATUS  
Filed: July 19, 2000 : UNDER 37 CFR 1.47(b)  
For: SULFATION-INDEPENDENT L- :  
SELECTIN OR E-SELECTIN LIGAND :  
(HCELL) AND THERAPEUTICS THEREOF :

This is in response to the request for reconsideration of petition under 37 CFR 1.47(b), filed February 4, 2002 (Certificate of Mailing date: January 14, 2002).

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to respond, correcting the below-noted deficiencies. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)" and may include an oath or declaration executed by the inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on July 19, 2000 without an executed oath or declaration and naming Robert Sackstein as the sole inventor.

Accordingly, on September 13, 2000, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration and a surcharge for its late filing. Petitioner filed a petition under 37 CFR 1.47(b) on April 13, 2001, which was dismissed on June 14, 2001.

In response, on February 4, 2002 (Certificate of Mailing date: January 14, 2002), a request for reconsideration of petition under 37 CFR 1.47(b) was filed which contained the following items:

- 1) Unexecuted Declaration and Power of Attorney with an added page for Signature by Person with Sufficient Proprietary Interest on Behalf of Nonsigning Inventor who Refuses to sign or Cannot be Reached;
- 2) a copy of the Notice to File Missing Parts;
- 3) petition for five month extension of time and associated fee;
- 4) the instant request for reconsideration of petition under 37 CFR 1.47(b);
- 5) a Statement of Facts in support of the 37 CFR 1.47(b) Petition; and
- 6) a memorandum of law of the jurisdiction that provides proof of proprietary interest.

A grantable petition under 37 CFR 1.47(b) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration;
- (2) an acceptable oath or declaration;
- (3) the petition fee;
- (4) a statement of the last known address of the non-signing inventor;
- (5) proof of proprietary interest; and
- (6) proof of irreparable damage.

Applicant lacks item (1) and (6), as set forth above.

As to item (1), Before an inventor can refuse to sign an oath or declaration, he must have been presented with a copy of the application papers (specification, claims and drawings). See Manual of Patent Examining Procedure, Section 409.03(d). Petitioner should show that a copy of the application papers was presented to the inventor, but that he did not respond to, or refused, the request that he sign the oath/declaration in order to show that the inventor has refused to join in the application. Ms. Rinaldi merely states that on four occasions Mr. Sackstein has been presented with an assignment and the declaration and power of attorney and that Mr. Sackstein has repeatedly refused to sign the declaration and power of attorney on each occasion. There is no evidentiary support that the non-signing inventor has been presented documentation that includes

the application papers (specification, claims and drawings). The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events. Accordingly, Rule 47 applicant failed to show or provide proof that the inventor has refused to sign the declaration.

As to item (6), Rule 47 applicant failed to provide proof of irreparable damage (see MPEP 409.03(g)). A statement by Rule 47 applicant that the filing is necessary to preserve the rights of the parties to prevent irreparable damage would be sufficient.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents  
Box DAC  
Washington, DC 20231

By FAX: (703) 308-6916  
Attn: Office of Petitions

By hand: Office of Petitions  
2201 South Clark Place  
Crystal Plaza 4, Suite 3C23  
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Telephone inquiries related to this decision should be directed to the undersigned at 703-306-9200.



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